Petition

81-1723

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1981

Junior F. Pandil, Petitioner

vs.

Illinois Central Gulf Railroad Company,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the Court of Appeals of Iowa

Junior F. Pandil
Petitioner, Pro Se
1226 South 27th
Fort Dodge, Iowa 50501

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1981

Junior F. Pandil, Petitioner

vs.

Illinois Central Gulf Railroad Company, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States.

Junior F. Pandil, the Petitioner, herein, prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Iowa entered in the above-entitled case on December 4, 1982.

Questions Presented

Whether Petitioner, who was employed by Respondent, and has a claim against Respondent for Respondent's violation of Petitioner's

rights under the Collective Bargaining Agreement between the Respondent and Petitioner's union, may prosecute his claim in state court rather than before the National Railroad Adjustment Board, where Petitoner's union arbitrarily and in bad faith refused to process Petitioner's claim against Respondent.

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Opinions Below

The opinion of the Court of Appeals of Iowa is unreported and is printed in Appendix A hereto, infra, page A2. The judgment of the Supreme

Court of Iowa is printed in Appendix A hereto, infra, page A1. The Journal Entry of Judgment of the District Court of Webster County, Iowa is printed in Appendix A hereto, infra, page A23.

Jurisdiction

The judgment of the Court of Appeals (Appendix A, infra, page A2) was entered on September 29, 1981. A timely petition for review was denied on December 4, 1981 by the Iowa Supreme Court (Appendix A, infra, page A1). The jurisdiction of the Court is invoked under 28 U.S.C. §1257(3).

Statute Involved

45 U.S.C. §153 FIRST (h)

45 U.S.C. §153 FIRST (i)

153. There is hereby established a Board, to be known as the National Railroad Adjustment

Board, the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided--

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

* * *

Third Division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

* * *

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

Statement

A. Statement of Facts

Prior to March 22, 1975 Petitioner was employed by the Illinois Central Gulf Railroad. Because of a decline in business, on March 22, 1975 Petitioner assumed a furlough status pursuant to a merger agreement between Respondent and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees. Thereafter, Petitioner became employed by the State of Iowa.

During the summer of 1978 Petitioner filed various claims for compensation under the terms of the Schedule of Rules and Working Conditions (the Collective Bargaining Agreement between the Brotherhood of Railway, Airline and Steamship Clerks, Frieght Handlers, Express and Station Employees and the Illinois Central Gulf) and the

Merger Agreement of September 15, 1972 between the Illinois Central Gulf Railroad and Gulf, Mobile & Ohio Railroad. Both agreements regulated Petitioner's relationship with Respondent at all times material hereto. Petitioner's claims are dated June 19, 1978, August 1, 1978 and August 7, 1978.

Subject matter of the Petitioner's grievance involved an occurrence in April of 1977, when Petitioner claims he was not called to fill a bulletined job as he should have been pursuant to the Merger Agreement and the Schedule of Rules and Working Conditions. Petitioner made additional claims for the months of April, May, June and July, 1978 when he claims he should have been recalled because of an increase in railroad business under the terms of his furlough and the Merger Agreement.

Under Rule 25(a) of the Schedule of Rules

and Working Conditions, all claims or grievances must be presented in writing within 60 days of the date of the occurrence on which the claim or grievance is based. None of Petitioner's claims except those of May, June and July, 1978 were submitted within 60 days of the occurrence on which the claim or grievance was based.

Rule 25 of the Schedule of Rules and Working Conditions further states that any claim declined by the Railroad must be appealed to the National Railroad Adjustment Board or other lawful action taken within nine months or they are barred from further consideration. Respondent Railroad's final adverse rulings were made on November 13, 1978, November 14, 1978, and November 16, 1978.

Beside filing a claim with the Railroad himself, Petitioner also filed a grievance with his Union. The Union's Division Chairman supported Petitioner's claim and processed it

against the Railroad. However, when the claim reached the next level of the Union, the General Chairman denied it arbitrarily and without explanation. Such denials continued through all remaining levels of the Union's grievance appeal process. The Collective Bargaining Agreement with Respondent requires Petitioner to go through all levels in the Union appeals procedure before he can do anything else to enforce his claim. Not only did the Union arbitrarily and unexplainedly deny Petitioner's grievance, it unreasonably and unexplainedly delayed processing it as well, and the final decision of the Union was not made until November 27, 1979. Until that decision was made, Petitioner could take no other action against Respondent.

B. Prior Court Action

Petitioner filed suit against Respondent in

Webster County, Iowa District Court on February 15, 1980, within nine (9) months of the date of the Union's final decision. On April 7, 1980, Respondent Railroad filed a Motion for Summary Judgment in the State court action, claiming basically that Plaintiff's claim was barred for not complying with two separate time limits in the Union Contract. First, the Railroad claimed Petitioner did not file his claim within sixty days after the event occurred, and it was barred by an appropriate provision of the collective bargaining agreement. Second, the Railroad claimed Plaintiff did not file this action (or appeal to the National Railroad Adjustment Board) within nine months of the date of the final decision on his claim by the Railroad. Respondent Railroad also alleged the State court had no subject matter jurisdiction in that the matter belonged before

the National Railroad Adjustment Board under 45 U.S.C. §153 FIRST (i).

The trial court held Petitioner was not barred by the sixty-day time limit, was barred by the 9-month time limit, and was barred by lack of subject matter jurisdiction (See Appendix A, page A30 to page A33).

Petitioner timely appealed the trial court decision to the Iowa Supreme Court. The case was referred to the Iowa Court of Appeals, which issued a decision on September 29, 1981 affirming the trial court on the basis of lack of subject matter jurisdiction under 45 U.S.C. §153 FIRST (i) (See Appendix Page A2). Petitioner timely requested further review by the Iowa Supreme Court, which request was denied on December 4, 1981. (See Appendix page A1). This was the final judgment in State Court.

Also, on July 23, 1980, Petitioner filed an action against his Union in Webster County, Iowa District Court, No. 48939, alleging the Union processed Petitioner's grievance unreasonably, improperly and maliciously. The case was removed to the United States District Court for the Northern District of Iowa, No. 2-C 80-0340, where it is now pending on the Union's Motion for Summary Judgment, which was submitted to the Court on December 17, 1981.

C. This Court's Jurisdiction

This Petition for Writ of Certiorari is a request for review of a final judgment of the highest court in Iowa, the Iowa Supreme Court. The State court judgment affects rights claimed by Petitioner under United States statutes, specifically 45 U.S.C. §153 FIRST (i). This Court therefore has jurisdiction pursuant to 28 U.S.C. §1257(3).

Reasons for Granting this Writ

This Writ should be granted under Supreme Court Rule 19(a), (b) and (c). Petitioner contends first that the Iowa courts decided a federal question of substance in a manner probably not in accord with applicable decisions of this Court and in a manner conflicting with a Federal Court of Appeals decision. Petitioner also contends that, in cases with facts analogous to those in this case, Federal circuit courts have rendered conflicting decisions.

Rule 19(c)

The legal issue involved in this case is whether a state court may have jurisdiction of a claim by a railroad employee against his railroad for a violation by the railroad of the applicable collective bargaining agreement or whether jurisdiciton is exclusively in the

National Railroad Adjustment Board, where under the facts the employee is alleging and attempting to demonstrate bad faith and misconduct on the part of his Union.

The last decision of this Court in this area was Andrews v. Louisville and Nashville R. Co., 406 U.S. 320 (1972). In interpreting §3 First (i) of the Railway Labor Act (45 U.S.C. §153 First (i)), that decision purports to state that a railroad employee's remedy against his employer for breach of his employment contract is exclusively before the National Railroad Adjustment Board, 406 U.S. at 325-26. Petitioner contends that Andrews did not involve a claim of union misconduct, and that, under decisions of this Court where there was evidence of union misconduct, the exclusivity rule did not apply and state court actions could be pursued.

Glover v. St. Louis-San Francisco Railroad Company, 303 U.S. 324, 330 (1969); Republic Steel Corp. v. Maddox, 379 U.S. 650, 652-53 (1964). Petitioner contends that the Iowa Courts have misinterpreted this Court's decision in Andrews and have given it a broader scope than was intended, and that under Glover and Maddox and the facts in this case Petitioner does have a right to pursue his employer in State court. Therefore, under Rule 19(c), the matter has not been decided in accordance with the probable decision of this Court.

Rule 19 (a) and (b)

Since the decision in Andrews, lower Federal courts have split on the question of whether an allegation of union misconduct provides an exception to the Andrews exclusivity rule. Thus, at least two circuits recognize an excep-

tion to the exclusivity rule and allow employees to sue their employers when union misconduct is claimed, Franklin v. Southern Pacific Transportation Co., 593 F.2d 899, 901 (9th Cir. 1979); Schum v. South Buffalo Railway Co., 496 F.2d 328, 331-32 (2d Cir. 1974), while at least one circuit does not, Haney v. Chesapeake & Ohio R.R., 498 F.2d 987 (D.C. Cir. 1974). Therefore, the standard of Rule 19(a) is met. Finally, since the Iowa courts' decisions in this case conflict with Federal Appeals Court decisions in Franklin and Schum, Rule 19(b) is satisfied.

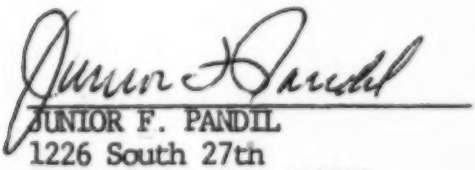
Therefore, since the decision of the Iowa court on the legal issue involved in this case is not in accord with the probable decision of this court and is in conflict with Federal Appeals Court decisions on the issue, and because there exists a definite conflict between the Federal Appeals

courts on that legal issue, it is appropriate for this Court to review this case in order to settle the issue.

Conclusion

For the foregoing reasons this petition for a Writ of Certiorari should be granted.

Respectfully submitted,



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March 11, 1982

Appendix

Appendix A

IN THE SUPREME COURT OF IOWA

JUNIOR F. PANDIL, *

Appellant, * No. 65422

vs. *

ILLINOIS CENTRAL GULF RAILROAD COMPANY, * ORDER

Appellee. *

Plaintiff-appellant's application for further review is hereby overruled and denied after consideration by this court en banc, McCormick, J., not participating.

Done this 4th day of December, 1981.

THE SUPREME COURT OF IOWA

By /s/ W. W. Reynoldson
Chief Justice

Filed December 4, 1981

IN THE COURT OF APPEALS OF IOWA

JUNIOR F. PANDIL,	*	
Plaintiff-Appellant,	*	Filed September 29, 1981
vs.	*	
ILLINOIS CENTRAL GULF RAILROAD COMPANY,	*	1-160 / 2-65422
Defendant-Appellee.	*	

Appeal from Webster District Court -

R. K. Richardson, Judge.

Plaintiff appeals from trial court's ruling sustaining defendant's motion for summary judgment contending that trial court erred 1) in determining that it was without jurisdiction to hear this case and 2) in concluding that, notwithstanding lack of jurisdiction, plaintiff failed to bring his appeal within the time limitation provided by the union's and employer's collective bargaining agreement.

AFFIRMED.

David J. Lawler, Fort Dodge, for plaintiff-appellant.

James L. Kramer and Dale A. Johnson of Johnson, Erb, Latham & Gibb, Fort Dodge, for defendant-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

JOHNSON, J.

Plaintiff, Junior F. Pandil, appeals from trial court's ruling sustaining defendant, Illinois Central Gulf Railroad's, motion for summary judgment. He contends that trial court erred 1) in determining that it was without jursidiction to hear this case and 2) in concluding that, notwithstanding lack of jurisdic-

tion, plaintiff failed to bring his appeal within the time limitation provided by the union's and employer's collective bargaining agreement. We affirm.

Plaintiff was employed by defendant railroad until March 22, 1975, when he was forced to assume "furlough status" because of a decline in business. This employment status, which entitled plaintiff to certain benefits, was made available to plaintiff pursuant to a merger agreement between defendant and the Brotherhood of Railway Airline and Steamship Clerks, freight Handlers, Express and Station Employees (the union). During the summer of 1978, plaintiff filed various claims for compensation under the terms of the collective bargaining and merger agreements. He claimed he was not recalled, as required by those agreements, when certain job openings were

bulletined by the company during April, 1977, and April, May, June and July, 1978. All claims (except the April, 1977, and April, 1978 claims) were filed within 60 days of the occurrence upon which each was based as required by rule 25(a) of the Schedule of Rules and Working Conditions contained in the collective bargaining agreement. Defendant's Director of Labor Relations declined all claims in his final adverse rulings made on November 13, 14, and 16, 1978.

In addition to filing his claims with defendant, plaintiff also filed a grievance with the union, which rendered its final decision adversely to plaintiff on November 27, 1979. While his union appeal was pending, plaintiff did nothing further to enforce his claim against defendant. As a result of the union's delay in processing his union appeal, plaintiff

did not pursue any further action on defendant's decision until February 15, 1980, when be brought the present common law suit for damages against defendant in the Iowa district court. In his petition, plaintiff claimed that he had been damaged by defendant's wrongful conduct in the amount of $75,000.00 arising from loss of wages and loss of railroad retirement benefits.

Defendant filed its answer and, subsequently, filed a motion for summary judgment that asserted 1) plaintiff's claim arising out of the April occurrences were barred by Rule 25(a) of the Schedule of Rule and Working Conditions, which required all claims to be presented to the railroad with 60 days after the occurrence upon which they were based, and 2) all claims were barred by rules 25(c) and 25(f) which required all appeals of other action from an adverse ruling of the highest designated

designated railroad officer to be instituted by the employee within nine months of the date of the decision. Defendant's brief and argument to the trial court also urged that trial court lacked jurisdiction to interpret, apply, or reform the provisions of the collective bargaining agreement, or to adjudicate disputes arising thereunder.

Trial court, while stating that the sixty day requirement was inapplicable because the company failed to comply with the provision requiring it to inform plaintiff of the job openings, held that plaintiff's exclusive remedy was administrative under section 3 of the Railway Labor Act, 45 U.S.C. §153 First (i), and that the court consequently lacked jurisdiction to hear the case. Moreover, notwithstanding lack of jurisdiction, trial court stated that plaintiff failed to bring his action within nine

months of the company's final decision (November, 1978) as required by the collective gargaining agreement. Finally, trial court held that, even assuming there was an exception to the "exclusive" administrative remedy, based on the futility of the administrative remedy, the circumstances of plaintiff's appeal to the Adjustment Borad did not fall within the purview of the "futile exception." This appeal followed.

I. Scope of Review. Our review of an action at law is for correction of errors only. Iowa Rule App. P. 4.

II. Subject Matter Jurisdiction. Defendant bases its jurisdictional argument on the exclusivity of the administrative remedy provided by section 3 of the Railway Labor Act.[1] Plaintiff, on the other hand, argues

than an exception to the exclusivity of the administrative remedy exists where pursuit of that remedy would be futile. We agree with defendant's assertion.

We begin our analysis by noting that an action by a railroad employee to recover earnings or benefits under a collective bargaining agreement necessarily involves interpreta-

---

[1] 45 U.S.C. §153(i) provides:

> (i). Disputes between an employee or group of employees and a carrier growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the Chief Operating Officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by Petition of the parties or by either party to the appropriate adjustment board with a full statement of the facts and all supporting data bearing upon the disputes.

tation and construction of the agreement. See Marchitto v. Central R.R. of New Jersey, 18 N.J. Super. 163, 165, 86 A.2d 795, 796 (1952). See also Haney v. Chesapeake & Ohio R.R., 498 F.2d 987 (D.C. Cir. 1974). Further, the United States Supreme Court has held that under section 3, First (i) of the Railway Labor Act (referring labor disputes to the Railway Adjustment Board), a state court is without power to interpret terms of a collective bargaining agreement, or adjudicate disputes arising out of that agreement. Order of Ry. Conductors v. Southern Ry., 339 U.S. 255, 256, 70 S.Ct. 585, 586 94 L.Ed.2d 811, 814 (1950); Slocum v. Delaware Lackawanna & W. R.R., 339 U.S. 239, 243-44, 70 S.Ct. 577, 579-80, 94 L.Ed.2d 795, 800 (1950). The Act is equally applicable to collective bargaining disputes ("major disputes") and employee grievances ("minor disputes"). See Slocum,

339, U.S. at 242, 70 S.Ct. at 579, 94 L.Ed.2d at 799. The purpose of the Act is to avoid interruption of commerce or an individual carrier, 45 U.S.C. § 151a, and it represents a considered effort on the part of Congress, in effectuating this purpose, to provide effective and desirable administrative remedies for adjustment of railroad-employee disputes growing out of the interpretation of existing agreements. Slocum, 239 U.S. at 243, 70 S.Ct. at 579, 94 L.Ed.2d at 799-800. The notion that Congress intended the procedures for adjustment of employer-employee disputes under the Railway Labor Act to be optional, not compulsory, and that, accordingly, a state court is free to hear such a case, is not good law. Andrews v. Louisville & Nashville R.R., 406 U.S. 320, 322-23, 92 S.Ct. 1562, 1564, 32 L.Ed. 95, 98 (1972). To permit a state court to hear such a

dispute would invite races of dilgence whenever a railroad or union preferred on forum to the other; and if a railroad or union could choose a court insted of the adjustment board, the other party would be deprived of the privilege conferred by § 3 First (i) of the Act. See Order of Ry. Conductors, 339 U.S.at 256, 70 S.Ct. at 586, 94 L.Ed.2d at 814. Thus, these administrative procedures are compulsory and exclusive.[2] Andrews, 406 U.S. at 322, 92 S.Ct. at 1564, 32 L.Ed.2d at 98.

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[2] In Andrews, the court said:

> The term "exhaustion of administrative remedies" in its broader sense may be an entirely appropriate description of the obligation of both the employee and carrier under the Railway Labor Act to resort to dispute settlement procedures provided by that Act. It is clear, however, that in at least some situations the Act makes the federal administrative remedy exclusive, rather than merely requiring exhaustion of remedies in one forum before

Relying on Glover v. St. Louis-San Francisco Ry., 393 U.S. 324, 89 S.Ct. 548, 21 L.Ed.2d 519 (1969), plaintiff nonetheless contends that an exception to the exclusivity of the administrative remedy exists whenever that remedy is futile.[3] However, even accepting that general proposition, we cannot agree that it applies in this case.

> resorting to another. A party who litigated an issue before the Adjustment Board on the merits may not relitigate that issue in an independent judicial proceeding. [citations] He is limited to the judicial review of the Board's proceedings that the Act itself provides. [citations] In such a case the proceedings afforded by 45 USC §153 First (i), will be the only remedy available to the aggrieved party.

406 U.S. at 325, 92 S.Ct. at 1565, 32 L.Ed.2 at 100.

[3] Two other exceptions were articulated earlier by the court in Vaca v. Sipes, 386 U.S. 171, 185, 87 S.Ct. 903, 914, 17 L.Ed.2d 892, 855 (1967):

1) where the employer repudiates the privated grievance machinery; and

2) when the union breaches its duty of fair representation.

First, we believe plaintiff fails to understand the import of the rule that a state court has no power to hear cases involving disputes growing out of the interpretation of employer-employee collective bargaining agreements. Slocum, 339 U.S. at 244-45, 70 S.Ct. at 580, 94 L.Ed.2d at 800. Order of Ry. Conductors, 339 U.S. at 256, 70 S.Ct. at 586, 94 L.Ed.2d at 814. This means a state court is without jurisdiction to hear such cases because federal law preempts the field. (emphasis added). Walles v. Int'l. Bhd. of Elec. Workers, 252 N.W.2d 701, 710 (Iowa 1977).

Second, assuming, arguendo, that this court has jurisdiction to decide the issue, we also conclude plaintiff has failed to show the applicability of the "futile" exception to the requirement that he exhaust his administrative remedies, thereby enabling him to seek

relief in court. We find the court's analysis in Haney v. Chesapeake & Ohio R.R., 489 F.2d 987 (D.C. Cir. 1974) (involving an alleged exception to the exhaustion requirement based on a union's breach of duty of fair representation), to be persuasive when it stated:

> ...While the composition of an adjustment board--equal numbers of employer and union representatives, and a single "neutral" member available in case of deadlock--is designed to provide a fair forum for the ordinary grievance, the same composition, appellant says, makes for an inadequate forum in which to present an argument that may be interpreted as a charge of union nonfeasance.
>
> * * *
>
> ... In effect, appellant would have us carve out an exception to Andrews whenever an aggrieved employee's prosection of his claims runs the risk of making his union an adversary. Although the concern expressed by appellant is plausible, we conclude that relieving her of the exhaustion requirement would open too large a hole in Andrews, and that the sound course is to require her to seek relief before the administrative tribunal, relying for further protection on the general doctrines of law permitting

> limited judicial surveillance in an action complaining of administrative abuse. In such an action, a court will have before it a record showing the adjustment board's response to the complaint's particular case. This avoids the difficulty of appraising the kind of assertions that appellant puts to us, assertions that are, however plausible, nevertheless speculative.

498 F.2d at 991-92.

Furthermore, allowing a plaintiff to go to court whenever he or she merely anticipates losing a dispute before the board would permit the plaintiff to engage in the type of forum shopping criticized by the Supreme Court in Order of Ry. Conductors, 339 U.S. at 256, 70 S.Ct. at 586, 94 L.Ed.2d at 814. We also agree with trial court's conclusion in this case that at the time an appeal to the Adjustment Board could have and should have been made, plaintiff would not have known of the union's adverse decision and that plaintiff, therefore, is using hindsight to bootstrap his

failure to pursue an appeal before the Board. See Sensabaugh v. Ry. Express Agency, Inc., 348 F. Supp. 1398, 1402 (W.D. Va. 1972).

We also believe there is an additional reason for finding plaintiff's reliance on the Glover exception to be misplaced. That case concerned s suit by employees of a railroad against the employer and the union jointly. (emphasis added). Plaintiffs claimed invidious racial discrimination by both defendant organizations, and existence of a concerted effort by both the employer and the union to defeat the employee's claims. The Court's rationale for carving out an exception to the generally exclusive jurisdiction of the Adjustment Board in employee grievances, thus, was based on the fact that the case involved the union and employer as parties against the employees. The Court said:

> It is true, as the respondents here contend that this Court has held that the Railroad Adjustment Board has exclusive jurisdiction, under § 3 first (i) of the Railway Labor Act, ... to interpret the meaning of the terms of a collective bargaining agreement. We have held, however, that § 3 First (i) by its own terms applies only to disputes between an employee or group of employees and a carrier or carriers. Conley v. Gibson, 355 U.S. 41, 44 (1957). In Conley, as in the present case, the suit was one brought by the employees against their own union .... In the present case, of course, the petitoners sought relief not only against their union but also against the railroad, ... in essence the "dispute" is one between some employees on the one hand and the union and management together on the other, not one "between an employee or group of employees and a carrier or carriers." 393 U.S. 324, 328-29, 89 S.Ct. 548, 550-51, 21 L.Ed.2d 519, 523.

Since the instant case involved only the employer and the employee as parties, we find the exception set out in Glover inapplicable. We have also considered the cases from several circuits cited by plaintiff in support of the exception

and find that these cases also concern suits in which the union was a party.

Lastly, we note that characterizing plaintiff's claim as one based purely on common law breach of contract does not protect it from the effect of the Andrews "exclusivity" rule. Our research of current law reveals only one narrow exception to federal preemption in which a plaintiff retains a common law cause of action. This exception was declared in Farmer v. United Bhd. of Carpenters, 430 U.S. 290, 97 S.Ct. 1056, 51 L.Ed.2d 338 (1977), a case involving a claim of intentional infliction of emotional distress resulting from outrageous conduct by union officials. There the court held the claim was not preempted by the National Labor Relations Act (N.L.R.A.), 20 U.S.C.A. 151 et. seq., because 1) the grievance was not one expressly covered by the N.L.R.A., 2) the State had

substantial interest in protecting its citizens from that type of conduct, 3) the risk that the action would touch an area of primary federal concern did not outweigh the State's interest in protecting its citizens, and 4) state law permitted recovery only as a result of "outrageous" conduct.

We do not believe Farmer is controlling authority for this case, even disregarding the fact that the cases arose under separate Acts.[4] Unlike Farmer, the instant case is based on facts which are inextricably intertwined with the grievance procedures of the collective bargaining agreement and the R.L.A. and, therefore, does not fit within the narrow exception to federal preemption as explained in Farmer.

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[4]For cases where courts have used N.L.R.A. analysis for R.L.A. facts, see Magnuson, 576 F.2d at 1369-70.

See Magnuson v. Burlington N., Inc., 576 F.2d 1367, 1369 (9th Cir. 1978) (complaint alleging common law tort of intentional infliction of emotional distress was properly dismissed because alleged misfeasance of railroad employees was a grievance governed by the collective bargaining agreement and thus preempted by federal law).

For all the above reasons, we therefore conclude that the district court of this state was without jurisdiction to hear the matter and that plaintiff is required to exhaust his federal administrative remedies.

III. Summary Judgment. Having determined that the district court did not have jurisdiction to hear this case, we find it unnecessary to consider whether the provision in the collective bargaining agreement requiring exhaustion of union appeal procedures before taking outside

action stays the nine month limitation contained in the schedule of rules of the collective bargaining agreement. We also need not consider whether defendant is barred from asserting the sixty day limitation.

Judgment of the district court is affirmed.

AFFIRMED.

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR WEBSTER COUNTY

JUNIOR F. PANDIL,	)	No. 48631
	)	
Plaintiff,	)	RULING
	)	upon
vs.	)	MOTION FOR SUMMARY
	)	JUDGMENT
ILLINOIS CENTRAL GULF RAILROAD COMPANY,	)	
	)	
Defendant.	)	

The Court has before it defendant's Motion for Summary Judgment, filed on April 7, 1980. A Resistance thereto was filed on April 28, 1980.

On April 28, 1980, a hearing was held. David J. Lawler for plaintiff; Dale A. Johnson for defendant.

Plaintiff filed a brief on May 2, 1980. Defendant's brief was filed on May 20, 1980. A reply brief was filed by plaintiff on June 11, 1980.

Having reviewed the file and considered arguments and briefs of counsel, the Court now on this 26th day of June, 1980, enters its Order.

Plaintiff filed a Petition on February 14, 1980, claiming benefits under the following agreements entered into by plaintiff, through his union, and defendant: Merger Agreement dated September 15, 1972, and a Schedule of Rules and Working Conditions dated August 30, 1974.

Junior F. Pandil claims defendant bulletined a job in April, 1977, which he should have been recalled to fill under the contract. Plaintiff further claims he should have been recalled in April, 1978.

Three sections of the Schedule of Rules and Working Conditions are pertinent. Rule 25 (a) states that claims must be filed with the company officer within sixty (60) days of the

occurrence upon which the claim is based. Rule 25 (c) bars claims or grievances instituted before the National Railroad Adjustment Board more than nine months after the decision by the highest designated officer. Rule 25 (f) provides that the agreement is not intended to deny the employees' rights to use any other lawful action for settling claims or grievances if such action is instituted within nine months of the highest designated company officer's decision.

Plaintiff instituted his claim based upon the April 1977 violation on June 19, 1978. He claims he did not learn of the violation until April, 1978, and contends defendant should not be allowed to rely on its breach of contract in failing to inform plaintiff of the bulletined position.

Plaintiff also claims he should have been recalled from April through July, 1978, due to

an increase in railroad business.

The last company decision was made on November 16, 1978. No appeal was made to the Railroad Adjustment Board. The Union's final decision on his grievance was made on November 26, 1979. The instant action was commenced in February, 1980.

Defendant contends plaintiff's failure to comply with the 60-day requirement or the nine month requirement or his failure to appeal to the Railroad Adjustment Board bar the present case.

Plaintiff argues that the company failure to notify him of the bulletined position extends the date to sixty days from knowledge of the position opening, that appealing to the Railroad Adjustment Board was futile and therefore not necessary, and that the nine months did not commence running until the Union made a final decision on his grievance.

CONCLUSIONS OF LAW

The Court's function in ruling on a summary judgment motion is to determine whether a guenuine fact issue is presented by the pleadings, admissions or other instruments before it. Rules of Civil Procedure No. 237(c); Steinback v. Continental Ins. Co., 237 N.W.2d 780, 783 (Iowa 1976).

Movant bears the burden of establishing absence of genuine fact issues and entitlement to judgment as a matter of law. Drainage Dist. No. 119 v. City of Spencer, 268 N.W.2d 493 (Iowa 1978); Steinback, 237 N.W.2d at 783.

The record is to be viewed in a light most favorable to resistant. Davis v. Comito, 204 N.W.2d 607, 612 (Iowa 1973).

The Railway Labor Act provides in salient part:

> "(i). Disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the Chief Operating Officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by Petition of the parties or by either party to the appropriate division of the adjustment board with a full statement of the facts and all supporting data bearing upon the disputes."

§ 3 of the Railway Labor Act, 45 U.S.C. §153 First (i).

The United States Supreme Court has held that the Railway Labor Act provides an exclusive remedy for labor grievances. The Court further held exhaustion of administrative remedies is a jurisdictional prerequisite to suit in federal court. Andrews v. Louisville & Nashville Rd. Co., 406 U.S. 320 (1972).

A few circuits carved exceptions to the exclusive remedy doctrine where:

(1) employer repudiates the private grievance machinery;

(2) union breaches duty of fair representation; or

(3) administrative remedies would be wholly futile.

Schum v. S. Buffalo Ry. Co., (2d 1974) 496 F.2d 328, 330; Smith v. B & O Rd. Co., (D.Md. 1979) 473 F. Supp. 572. See Williams v. Texas Internat'l Airlines (S.D. Texas, 1977) 435 F. Supp. 703, 706-07.

Other circuits apply the Andrews doctrine strictly and refuse to allow exceptions thereto. One court held that an exception to an "exclusive" remedy is a blantant contradiction in terms. Hill v. S. Ry. Co. (W.D.N.Car. 1975) 402 F. Supp. 414, 418. Another court held that merely because members of the Adjustment Board

were selected by defendants did not provide an adequate reason for plaintiff's failure to use internal remedies. Sensabaugh v. Ry. Express Agency, Inc. (W.D.Va 1972) 348 F. Supp. 1398, 1402. See: Williams, 435 F. Supp. at 707; Dorsey v. Chesapeake & Ohio Ry. Co. (4th 1973) 476 F.2d 243; Haney v. Chesapeake & Ohio Rd. Co., 162 U.S.App. D.C. 254, 497 F.2d 989 (1974).

There is no definitive Eighth Circuit case on this issue. However, it appears the Eighth Circuit would apply Andrews strictly. See generally: Neal v. System Bd. of Adjustment (Mo. Pac. Rd.) (8th 1965) 348 F.2d 722; Florey v. Air Line Pilots Assoc., Internat'l (D.Minn., 1977) 439 F. Supp. 165.

The Court agrees the sixty day requirement is inapplicable here because plaintiff contends the company failed to comply with contractural requirements of informing plaintiff of the

bulletined position. If true, the company should not profit from its own wrongdoing.

However, the Court finds no merit in plaintiff's remaining arguments regarding exhaustion of remedies and the nine month requirement.

This Court believes strict application of the Andrews doctrine is in order. Therefore, because plaintiff failed to exhaust his internal grievance procedure remedies, this Court is without jurisdiction in the case sub judice.

But even if this jurisdiction were to adopt Schum exceptions, an appeal to the Railway Adjustment Board would not fall within the purview of the "futile" exception. If the Union had not finalized its decision regarding plaintiff's grievance at the time an appeal to the Adjustment Board could be made, plaintiff would not know the Board would be "stacked"

against him. By using hindsight to justify his position, plaintiff is attempting to bootstrap the Union's later decision to justify his failure to pursue an appeal before the Board.

Additionally, the present action was not brought against the Union. This is one factor to be considered in the event exceptions to the exclusivity rule is allowed. Under the fact situation thus presented, plaintiff should have pursued the final steps of the internal grievance procedure.

But even if this were not the case, plaintiff did not timely file the present petition. More than nine months passed from the date of the highest designated company officer's decision. The language of Rule 25 (f), Schedule of Rules and Working Conditions,

specifically provides that the nine months commences at the date of the company officer's decision. The Court is not free to rewrite the parties' agreement. Nor does the Court find said provision as applied to the present facts in violation of the letter or the spirit of the Railway Labor Act.

The Court determines that no material fact question is present and defendant is entitled to judgment as a matter of law.

IT IS THE ORDER OF THIS COURT that defendant's Motion be and the same is hereby SUSTAINED.

Dated this 26th day of June, 1980.

BY THE COURT:

/s/ R. K. Richardson
Judge of the Second Judicial District of the State of Iowa

Filed June 26, 1980

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR WEBSTER COUNTY

JUNIOR F. PANDIL,	*	
Plaintiff.	*	NO. 48631
vs.	*	
ILLINOIS CENTRAL GULF RAILROAD COMPANY,	*	NOTICE OF APPEAL
Defendant.	*	

To the above named Defendant--Appellee, and to Patricia McLoud, Clerk of the District Court of Webster County, Iowa:

You are hereby notified that Plaintiff--Appellant herein does hereby appeal to the Supreme Court of Iowa from the Order of the Court herein made and entered on June 26, 1980, designated Ruling Upon Motion for Summary

Judgment; and that said Appeal will come on for hearing in its regular order in said Court.

Dated July 3, 1980.

/s/ David J. Lawler
Attorney at Law
200 Snell Building
Fort Dodge, Iowa 50501
515-573-2264

Attorney for Plaintiff--
Appellant

Filed July 7, 1980

Opposition

Supreme Court, U.S.
FILED
APR 17 1982
ALEXANDER L. STEVAS
CLERK

NO. 81-1723

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

JUNIOR F. PANDIL,
Petitioner

vs.

ILLINOIS CENTRAL GULF RAILROAD COMPANY,
Respondent.

On Petition for a Writ of Certiorari to
the Supreme Court of Iowa

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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I

QUESTION PRESENTED

I. Whether Petitioner, who was employed by Respondent, and has a claim against Respondent for Respondent's violation of Petitioner's rights under the Collective Bargaining Agreement between the Respondent and Petitioner's union, may prosecute his claim in state court rather than before the National Railroad Adjustment Board, where Petitioner's union arbitrarily and in bad faith refused to process Petitioner's claim against Respondent.

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NO. 81-1723

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

JUNIOR F. PANDIL,
Petitioner

versus

ILLINOIS CENTRAL GULF RAILROAD COMPANY,
Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of Iowa

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

OPINIONS BELOW

The September 29, 1981 opinion of Court of Appeals of Iowa, whose judgment is sought to be reviewed, is reported at 312 N.W. 2d 139 (Iowa 1981), and is reprinted in the Appendix (Appendix

A pp A2-A22). The December 4, 1981 order of the Supreme Court of Iowa overruling and denying Plaintiff-Appellant's application for further review is not reported. It is reprinted in the Appendix (Appendix A p. A1). The prior decision of the District Court of Webster County is not reported. It is reprinted in the Appendix (Appendix A pp. A23-A33).

STATEMENT OF THE CASE

Junior F. Pandil, the Plaintiff in the State Court, who is here the Petitioner, will be referred to as "Pandil." The Defendant in the State Court, Illinois Central Gulf Railroad Company[1], which is filing this Brief in Opposition to the Petition for Certiorari, shall be referred to as the "Railroad."

---

1. The following is a list of all parent companies, subsidiaries and affiliates, per Rule 28.2 of the Supreme Court Rules. (con't. on page 22)

The Petition was filed in the District Court of the State of Iowa on February 15, 1980. Pandil alleged that the Railroad breached the merger agreement and Schedule of Rules and Working Conditions entered into between the Railroad and Pandil's union when the Railroad failed in April of 1977 and in April of 1978 to recall Pandil to work. Pandil did not join his union as a defendant to this action, nor did he make any claim in his Petition that the union had breached its duty of fair representation or in any other manner had wronged him.

The Railroad moved for summary judgment, contending that Pandil had not complied with the time limits set by the Schedule of Rules and Working Conditions. Under Rule 25A of the Schedule of Rules and Working Conditions, all claims or grievances must be presented in writing

within sixty days of the date of the occurrence on which the claim or grievance is based. Only Pandil's claims for May, June and July of 1978 were timely submitted. Rule 25C provides that all claims involving a decision of the highest designated officer of the Railroad shall be barred unless proceedings are instituted by the employee or his representative before the National Railroad Adjustment Board within nine months from the date of the decision. These rulings were dated November 13, November 14, and November 16, 1978. No proceedings were instituted before the National Railroad Adjustment Board within nine months of the dates of those decisions. Pandil admitted his failure to comply with the requirements of the contract, but argued that his noncompliance should be excused.

Pandil's Affidavit in Resistance to

the Motion for Summary Judgment, stated that the union did not support his position, that he had filed a grievance with the union and that the union unreasonably delayed processing his grievance and did not render a final decision upon that grievance until November 27, 1979.

The Railroad's brief in support of its Motion for Summary Judgment urged that the Trial Court lacked jurisdiction to interpret, apply or reform the provisions of the collective bargaining agreement or to adjudicate disputes arising thereunder.

The Trial Court found that there was no dispute as to any material fact and sustained Defendant's Motion for Summary Judgment, finding: (1) the sixty day requirement was inapplicable because the Railroad failed to notify Pandil of the job openings; (2) Pandil's exclusive

remedy was administrative under §3 of the Railroad Labor Act, 45 U.S.C. §153 First (i); (3) the Court lacked jurisdiction to hear the case; (4) Pandil failed to bring his action within nine months of the company's final decision as required by the collective bargaining agreement; and (5) even if there were an exception to the exclusive administrative remedy based upon the futility of the administrative remedy, the facts did not fall within that exception.

Pandil appealed to the Iowa Supreme Court, which assigned the case to the Court of Appeals for decision. The Court of Appeals affirmed, holding: (1) the administrative procedures under the Railroad Labor Act are compulsory and exclusive and deprive a State Court of jurisdiction to interpret the terms of the collective bargaining agreement or adju-

dicate disputes arising out of the agreement; (2) Pandil failed to show the applicability of the "futile" exception to the requirement that he exhausted administrative remedies; and (3) no exception to the "exclusivity" rule applies. Since the Court of Appeals determined that the District Court lacked jurisdiction to hear the case, it did not consider or decide the issue of the timeliness of Pandil's suit. Pandil's Motion for Further Review was denied by the Iowa Supreme Court on December 4, 1981.

REASONS FOR DENYING THE WRIT

I

CERTIORARI SHOULD BE DENIED IN THIS CASE BECAUSE NEITHER THE DECISION BELOW NOR THE RECORD RAISES THE QUESTION PRESENTED IN THE PETITION.

The sole question presented in the Petition is whether Pandil may sue the Railroad in State Court rather than before

the National Railroad Adjustment Board over an alleged violation of the collective bargaining agreement,

> "...where Petitioner's union arbitrarily and in bad faith refused to process Petitioner's claim against Respondent." (Petition pp. 1-2).

Pandil's Petition makes no reference to any failure of his union to represent him or prosecute his claim. In Pandil's affidavit filed in resistance to the Railroad's Motion for Summary Judgment, he alleged:

> "Beside filing grievances with the Railroad, I also filed a grievance with the Union. The Union did not support my position. The contract requires me to go through all levels of the Union appeals procedure before I can do anything else to enforce my grievance. The Union unreasonably delayed processing my grievance, and the final decision was not made until November 27, 1979. Until that decision was made, I could take no other action

> against the Railroad. I have filed this action within nine (9) months of the date of the Union's final decision."

Pandil did not assert that his union breached its duty of fair representation, rather his claim was that the union unreasonably delayed the processing of his grievance filed against the union, not the Railroad. The record does not support Pandil's assertion that his union failed to process his claim against the Railroad. The claim was, in fact, processed against the Railroad until it was denied by the Railroad's highest designated officer.

Pandil was required by Rule 25 to institute proceedings before the National Railroad Adjustment Board within nine months of the officer's decision in order to preserve his claim. Pandil did not institute these proceedings. He does not claim that he was relying upon his union

to institute the proceedings for him, or was led to believe that the claim would be instituted by his union or that the time limitation would be relaxed.

Neither the Trial Court nor the Court of Appeals found that the union refused to process Pandil's claim against the Railroad. Neither the Iowa Court of Appeals nor the Iowa Supreme Court decided the question presented by the Petitioner. The facts of the record will not support a determination of that question by this Court. In order to raise the question, Pandil was required to establish a genuine issue of material fact on the issue of whether the union breached its duty of fair representation. He did not produce any evidence from which the Trial Court could infer either hostility, arbitrariness, or bad faith in the union's representation of him. In the absence

of such evidence, the record cannot support the question presented. Franklin vs. Southern Pacific Transportation Co., 593 F. 2d 899 (9th Cir. 1979).

II

CERTIORARI SHOULD BE DENIED IN THIS CASE BECAUSE THE IOWA COURT'S DECISION IS IN ACCORDANCE WITH THE APPLICABLE AND PROBABLE DECISIONS OF THIS COURT.

The most recent applicable decision of this court is Andrews vs. Louisville and Nashville Railroad Company, 406 U.S. 320 (1972). In that decision this court overruled Moore vs. Illinois Central R. Co., 312 U.S. 630 (1941) and held that the grievance and arbitration proceedings set forth in the Railroad Labor Act are mandatory and must be followed. The court held that the Railroad Labor Act required the exhaustion of administrative remedies in the broadest sense.

In the earlier case of Vaca vs. Sipes, 386 U.S. 171 (1967) the court

recognized two exceptions to this rule: (1) where the employer repudiates the private grievance machinery; and (2) where the union breaches its duty of fair representation. In Glover vs. St. Louis-San Francisco Ry., 396 U.S. 324 (1969), added an additional exception where the effort to proceed formally with contractual or administrative remedies would be wholly futile. In that particular case, it was alleged that the union neglected and betrayed its members and acted in concert with the railroad to set up schemes and contrivances to bar negroes from promotion wholly because of race. There is no indication in that case that the Supreme Court would undermine its decision in Andrews by creating an exception to the exclusivity rule whenever an employee contends that his union is not supporting his claims wholeheartedly. If the

employee had the right to bring an action in state court whenever he believed he might not prevail before the Railroad Adjustment Board, exactly the type of forum shopping that was criticized in Order of Ry. Conductors, 339 U.S. 255 (1950) would be encouraged. Such an exception to the exclusivity rule would undermine the rule completely and would constitute an abandonment of Andrews.

Pandil's failure to proceed before the Railroad Adjustment Board cannot be excused by any of the recognized exceptions to the exclusivity rule. The decision by the Court of Appeals of Iowa is consistent with the existing decisions of this court and is unlikely to conflict with any future decisions that this court might render.

III

CERTIORARI SHOULD BE DENIED IN THIS CASE BECAUSE THERE IS NO CONFLICT BETWEEN

THE COURTS OF APPEALS WHICH COULD AFFECT THE OUTCOME OF THIS CASE.

Pandil asserts that the decision of the Supreme Court of Iowa conflicts with the decision of a Federal Court of Appeals. He asserts that two Circuit Courts of Appeals permit an exception to the exclusivity rule where union misconduct is claimed and that one Circuit Court of Appeals does not. In Franklin vs. Southern Pacific Transportation Co., (9th Cir. 1979), the Court held that an aggrieved employee may bypass the adjustment board and bring a wrongful discharge action in District Court where his union is guilty of a breach of the duty of fair representation. In Schum vs. South Buffalo Railway Co., 496 F.2d 328 (2d Cir. 1974), the Court held that the employee would be excused from not exhausting his contractual remedies if he could show that he reasonably relied on his union to

process his grievance administratively and the union failed to take the proper action within the necessary time limits. Both these cases involved wrongful discharge. The District of Columbia Circuit Court's decision in Haney vs. Chesapeake & Ohio Railroad Co., 489 F.2d 987 (D.C. Cir. 1974) is not necessarily in conflict, for the Court held that a claim that the administrative remedy was inadequate because the union might be hostile did not constitute an exception to the exclusivity rule. That, too, was a wrongful discharge claim. Pandil does not claim that he was discharged, but merely that the Railroad wrongfully failed to recall him from a furlough status. Pandil did not present any evidence that the union breached its duty of fair representation or that he was relying upon the union to bring his claim to the Railroad

Adjustment Board and that the union failed to present the claim.

The issue that Pandil presented to the Iowa Court of Appeals was whether an exception to the exclusivity rule exists where pursuit of the administrative remedy would be futile. (Appendix A p. A9). The Iowa Court of Appeals held that the administrative procedures provided by the Railway Labor Act 45 U.S.C. §153 First, are compulsory and exclusive. (Appendix A p. A12). The Court below held that since this area had been pre-empted by Federal law, the State Court was without jurisdiction to determine whether the administrative remedy is futile. (Appendix A p. A14). The Iowa Court of Appeals went further and stated that if it had jurisdiction to decide the issue, it would conclude that Pandil failed to show the applicability of the "futile"

exception to the requirement that he exhaust his administrative remedies. The Court rejected Pandil's contention because, at the time Pandil was required to appeal to the Adjustment Board, he could not have known that the union would subsequently rule adversely to him on his grievance against the union. The Court also rejected Pandil's contentions because the instant case involved only the employer as a defendant, not the employer and the union jointly. (Appendix A p. A18).

Pandil offered no satisfactory explanation for his failure to exhaust his administrative remedies. His claim that his union failed to promptly process his grievance against the union would not constitute a basis for an exception to the exclusivity rule recognized by any Federal Circuit Court of Appeals. As there is no conflict between the Circuits

that would affect the outcome of Pandil's case, the writ of certiorari should be denied.

IV

CERTIORARI SHOULD BE DENIED IN THIS CASE BECAUSE PANDIL'S CLAIM IS BARRED BY THE COLLECTIVE BARGAINING AGREEMENT.

Rule 25 of the Schedule of Wages and Rules, in subparagraph C. provides that all claims or grievances involved in a decision of the highest designated officer of the Railroad shall be barred unless, within nine months from the date of the decision, proceedings are instituted by the employee or his representative before the National Railroad Adjustment Board. Subparagraph F provides that the employee is precluded from bringing any other action upon the claim or grievance unless instituted within nine months from the date of the decision. Pandil neither brought proceedings before the National Railroad

Adjustment Board nor commenced his civil suit within nine months of the decision of the highest designated officer of the company. This issue was presented to the Trial Court and the Trial Court held that Pandil's failure to bring his claim within the nine month period was a bar to the action. (Appendix A. pp. A32 and A33). This issue was raised in the appeal to the Iowa Court of Appeals. The Court of Appeals did not reach this issue because of its prior determination that it lacked jurisdiction to hear the case (App. pp. A21, A22).

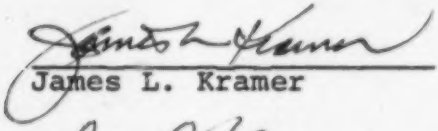
Certiorari should be denied in this case because even if the United States Supreme Court were to review and reverse the decision of the Iowa Court, Pandil's claim would fail because it is barred by the period of limitation contained within the collective bargaining agreement.

CONCLUSION

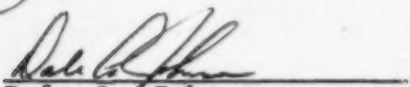
The decision of the Iowa Court of Appeals does not raise the question presented in the petition. The record does not support the question of the Union's arbitrary and bad faith refusal to process Pandil's claim against the Railroad. Pandil made no attempt to exhaust his administrative remedies. His union's lack of support for his claims, even if true, would not qualify as an exception to the exclusivity rule under any Court of Appeals decision. The Iowa Court of Appeal's decision is in accord with the decisions of this court and the decisions of the Courts of Appeals. Finally, even if the writ were to be granted and the case reversed and remanded, Pandil's claim would fail because he failed to institute proceedings before the Adjustment Board or the civil courts within

the limitation period established by the contract. Therefore, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,



James L. Kramer



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continuation of footnote 1.

I.C. Industries, Incorporated; I.C. Products Company; Abex Corporation; Bubble Company, Incorporated; Dad's Rootbeer Company; I.C.P. Holding Company; Midas International Corporation; Pepsi Cola General Bottlers,Incorporated; Pepsi Cola Kantor Bottling Incorporated; Centicon Incorporated (N-S); Colony Financial Corporation; Endro Corporation; Haleyville Tubes Incorporated (N-S); I.C. Equipment Leasing Company; I.C. Equities Incorporated (Del.); I.C. Leasing Incorporation; I.C. Sub-Incorporated (N-S); Iconic, Incorporated (N-S); Illinois Center Corporation; Illinois Gulf Railroad Company; Illinois Central Industries, Incorporated (N-S); La Salle Properties Incorporated; Lincoln Financial Incorporated; Mid-America Improvement Corporation (N-S); Pepsi Cola Bottling Company of Kenosha & Racine; South Properties Incorporated; I.C. Export Corporation (A Disc); American Brakeshoe Company (N-S); Bridgewater Machine Company (N-S); Shandeyssen Electric Company (N-S); Denison Hydraulics Company (N-S); Signal-Stat Corporation (N-S); Stanray Corporation (N-S); Pet Incorporated (Del.); Black Diamond Incorporated; Frolic Homes, Incorporated; Huth Manufacturing Corporation; International Parts Corporation (N-S); International Stamping Company, Incorporated; Ken-Craft Products Incorporated; Midas Steel Processing Services Incorporated; Midas Truck Body Incorporated (N-S); Muffler Corporation of America; Norris Homes Incorporated; Sea-Nymph Corporation (N-S); Cosmic Enterprises Incorporated; Midas Realty Corporation; Genadco Advertising Agency Incorporated; Hi-Two Products Company (N-S); Kentuckiana Bottlers Incorporated (N-S); Kolmar Products Corporation; Pepsi Cola Bottling Company of Cincinnati; Bent Creek Development Company; Bowling Brook Plaza Incorporated; Cove Development Corporation; I.C. Equities of Texas Incorporated; Lake Winds Development Company;

continuation of footnote 1.
Oak Village Development Corporation; Bowling Brook 55 Corporation; S & T South Incorporated; Blue Island Rail Road Company; Chicago Intermodal Company; GM&O Land Company; Gulf Transport Company; Kensington & Eastern Railroad Company (N-S); New Orleans Great Northern Railroad Company; South Chicago Railroad Company; Waterloo Railroad Company; Mississippi Valley Corporation; Cypress Bend Corporation; Environ of Inverrary Incorporated; S & T of Mississippi Incorporated; Pet International Sales Incorporated (A Disc); Merchants Refrigerating Company; Hussman Refrigerator Company; 905 Wine and Spirits Incorporated; Applied Air Systems Incorporated; Au Gourmet Foods Deluxe Incorporated (N-S); Compet Corporation (N-S); Helvetia Leasing Corporaation; Helvetia Milk Condensing Company Incorporated (N-S); Helvetia Properties Incorporated (N-S); Helvetia Redevelopment Corporation; Laura Scudder's Incorporated (N-S); Merchants Realty Company of Alabama; Milady Foods Incorporated (N-S); Nine-Zero-Five Stores Incorporated; Parrish Bakeries Incorporated (N-S); Peoples Liquor Incorporated (N-S); Pet Incorporated (Wyoming)(N-S); Pet Milk Company (N-S); Petsub, Incorporated (N-S); Port 400 Holding Company (N-S); St. Louis Lythographing Company; Southland Canning & Packing Company Incorporated; Spartanburg Diary Incorporated; Stuckey's Incorporated; Stuckey's Stores Incorporated; Vendome Stores Incorporated; Violet Packing Company, Incorporated; Stephen F. Whitman & Sons, Incorporated (N-S); Winebrenner Corporation, The (N-S); Cosmic Stores Incorporated; Midas Properties Incorporated; Chicago & Illinois Western Railroad Company; Merchants Refrigerating Company of California; Alton Manufacturing Company; Butcher-Boy Refrigerator Door Company (N-S) Hussman Acceptance Company; Hussmann Refrigeration Incorporated; Mohawk Cabinet Company Incorporated; (N-S); Star Cooler Corporation; Chesley Industries

continuation of footnote 1.
Incorporated; Old Brazos Forge Incorporated; Krack Corporation; Gas Welding Incorporated; Krack Corporation International (A Disc.); Hussman International Sales Incorporated (A Disc.);